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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/206,329 | 12/08/1998 | GENG ZHANG | 970663.ORI | 5359 |

7590 06/17/2005

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EXAMINER

EVANISKO, GEORGE ROBERT

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3762

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/206,329

Applicant(s)

ZHANG ET AL.

Examiner

George R. Evanisko

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-15,17-19,21-33,35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-15,17-19,21-33,35 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3-15, 17-19, 21-33, 35, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haefner et al in view of either Zhu et al (6044296 or 5843136).

Haefner meets the limitations of the term "reduced capacitance". In addition, Haefner describes figure 1 as a dual chamber cardioverter/defibrillator with pacing capability (col 3, ln 45) being able to selectively operate in the unipolar or bipolar sensing modes having atrial and ventricular tip and ring electrodes, a can indifferent electrode, and a metallic housing. Haefner further describes in figure 2 the use of a system to selectively sense in the bipolar mode using the

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tip and ring electrodes and indifferent can electrode and meets the electrode combination

limitations of claims 3, 4, 6, 11, 15, 21, 22, 24, 29, and 33.

But Haefner et al disclose the claimed invention except for the other different particular combinations of unipolar or bipolar sensing between atrial electrodes (tip and/or ring), ventricular electrodes (tip and/or ring), and case/can electrodes, for a system to selectively sense between all combinations of any two electrodes and the afterpotential means comprising a first capacitor for attenuating afterpotentials coupled to a second capacitor for blocking DC components and including switching means for selectively coupling the capacitors in series to reduce the effective capacitance. Either Zhu teaches that it is known to have the afterpotential means comprising a first capacitor for attenuating afterpotentials coupled to a second capacitor for blocking DC components and including switching means for selectively coupling the capacitors in series to reduce the effective capacitance to allow the system to quickly sense evoked responses after pacing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implantable electrical therapy device using unipolar and bipolar sensing as taught by Haefner, with an equivalent afterpotential means comprising a first capacitor for attenuating afterpotentials coupled to a second capacitor for blocking DC components and including switching means for selectively coupling the capacitors in series to reduce the effective capacitance as taught by either Zhu and with different selective combinations of unipolar or bipolar sensing between atrial electrodes (tip and/or ring), ventricular electrodes (tip and/or ring), and case/can electrodes for a system to sense between all combinations of any two electrodes since it was known in the art that unipolar or bipolar sensing between atrial electrodes, ventricular electrodes, and case/can electrodes are used in systems to

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selectively sense between all combinations of any two electrodes and are used in pacemakers, defibrillators, and ICD's to sense heart activity and that particular configurations are chosen depending on the implantation of the leads and the sensing of the particular heart condition(s). In addition, the modification using either Zhu would provide afterpotential attenuating systems using afterpotential means comprising a first capacitor for attenuating afterpotentials coupled to a second capacitor for blocking DC components and including switching means for selectively coupling the capacitors in series to reduce the effective capacitance and allow the system to quickly sense the evoked response after pacing.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. A terminal disclaimer was previously filed to overcome the double patenting rejection in view of either Zhu. For applications filed on or after November 29, 1999, the 103 rejection might be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

The argument that Haefner et al do not disclose the claimed afterpotential attenuating circuit is not persuasive since either Zhu reference was provided to show it was obvious to use the claimed afterpotential attenuating circuit. The argument that neither Zhu or Haefner disclose a system in which any electrode combination can be used to sense capture is not persuasive since the examiner has previously provided several references showing the use of selective sensing between all/any electrode combination.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R. Evanisko whose telephone number is 571 272 4945. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571 272 4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


George R Evanisko
Primary Examiner
Art Unit 3762

6/16/5

GRE
June 16, 2005